

Application No. 10/025,773

Docket No.: K2300.0001/P001

REMARKS

No claims have been amended. Claims 1, 3 and 5-22 remain pending in the application. Applicants reserve the right to pursue the original claims and any other claims in this and in other applications.

Claims 1, 3 and 5-22 stand rejected under § 103 (a) as being unpatentable over Neeson et al. (U.S. Patent No. 5,786,978) ("Neeson") in view of Hastings (U.S. Application Publication No. 2004/0107217). The rejection is respectfully traversed.

At the outset, Applicants respectfully submit that Hastings is not a proper prior art reference and cannot be cited by the Office Action against the present application. Hastings was filed on July 3, 2003. The present application, on the other hand, was filed on December 26, 2001. Thus, Hastings was not patented, used, published or the subject of a patent application in the U.S. prior to the invention of the claimed invention. Therefore, Hastings is not a proper prior art reference as defined by 35 U.S.C. § 102 and the rejection should be withdrawn.

Even if Hastings were a proper prior art reference, as articulated in the previous Amendments dated July 27, 2005 and January 31, 2006, the cited combination of Neeson and Hastings, whether considered alone or in combination, do not teach or suggest all limitations of claims 1 and 3. Applicant respectfully submits that the cited combination fails to teach or suggest a tracking device system comprising "[a] physical asset, [a] communication means and [a] receiving means," all in continuous communication to track the location of a physical asset, as recited in claim 1, or a tracking method comprising the steps of "tracking the physical asset by transmitting a second data signal; interrogating the second data signal to determine a status signal; and storing the status signal in the central server," as recited in claim 3. Claims 19-21 recite similar limitations.

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Neeson generally refers to an apparatus for tracking and reporting equipment inventory on a locomotive equipped with a mobile communications package. More specifically though, Neeson refers to a communications network in which a central station communicates with its locomotives and thus, indirectly has the ability to track the locomotive by determining which communication station is being used to communicate. In other words, the Office Action is using the elements of Neeson's communications package to teach or suggest limitations of the tracking system of the claimed invention.

Hastings generally refers to a method and apparatus for modifying relocatable object files. In particular, Hastings refers to a method for inserting additional instructions and data into an existing relocatable object file of a computer program to monitor memory access. Applicant respectfully submits that Hastings simply refers to tracking an item, e.g., a code file, within an object code and has nothing to do with the tracking of physical assets.

Given these two cited references, there would be no motivation to combine Neeson and Hastings to achieve the claimed invention. The cited references relate to completely different arts. Neeson relates to a communications system and Hastings relates to computer program for modifying relocatable object files. No one of ordinary skill in the art at the time of invention would have looked to a computer program for modifying relocatable object files to modify a communications system to achieve a tracking device system comprising "[a] physical asset, [a] communication means and [a] receiving means," all in continuous communication to track the location of a physical asset, as recited in claim 1 or a tracking method comprising the steps of "tracking the physical asset by transmitting a second data signal; interrogating the second data signal to determine a status signal; and storing the status signal in the central server," as recited in claim 3. Accordingly, it would not have been obvious to

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one of ordinary skill in the art to combine Neeson and Hastings to achieve the physical asset tracking system of the claimed invention.

Therefore, Applicant respectfully submits that Neeson and Hastings, whether considered alone or in combination, fail to teach, suggest or render obvious all limitations of claims 1, 3 and 19-21. Claims 4-9 depend from claim 3 and should be allowable along with claim 3. Claims 10-18 depend from claim 1 and should be allowable along with claim 1. Claim 22 depends from claim 21 and should be allowable along with claim 21.

Accordingly, Applicant respectfully requests that the rejection be reconsidered and withdrawn, and claims 1, 3 and 5-22 allowed.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

By 

Philip G. Hampton, II

Registration No.: 30,642

DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP

2101 L Street NW

Washington, DC 20037-1526

(202) 785-9700

Attorney for Applicant